



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 26, 2023

IN THE MATTER OF:

Appeal Board No. 628241

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board No. 628239, the claimant appeals from the decision of the Administrative Law Judge filed March 1, 2023, which sustained the initial determination holding the claimant ineligible to receive benefits, effective September 28, 2015 through January 24, 2016, on the basis that the claimant was not totally unemployed, as modified to be two days of ineligibility in each of the statutory weeks in the period.

In Appeal Board No. 628240, the claimant appeals from the decision of the Administrative Law Judge filed March 1, 2023, which sustained the initial determination charging the claimant with an overpayment of \$7,007.50 in benefits recoverable pursuant to Labor Law § 597 (4), as modified in

accordance with the decision in Appeal Board No. 628239.

In Appeal Board No. 628241, the claimant appeals from the decision of the Administrative Law Judge filed March 1, 2023, which sustained the initial determination reducing the claimant's right to receive future benefits by 136 effective days and charging a civil penalty of \$756.93 on the basis that the claimant made willful misrepresentations to obtain benefits, as modified to impose a civil penalty in accordance with the decision in Appeal Board No. 628239.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was not taken. There was an appearance on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a further hearing. The claimant did not participate at the March 1, 2023 hearing because he had a medical issue that day which required him to seek medical attention. As a result, the Board has determined that the parties should have another opportunity to submit additional testimony and other evidence on the issues. The appeal letter dated March 3, 2023, with supporting medical document, is to be entered into the record in the usual manner.

The Commissioner of Labor is to appear again by Janna Gill, Senior Unemployment Insurance Hearing Representative, and James Roseau, Investigative Officer. The claimant's representative, if any, is to be offered the opportunity to cross-examine the testimony of the witnesses for the Commissioner of Labor from all hearings and to offer objections to the entry of the documents previously entered into the record as exhibits. If the claimant proceeds without representation, the claimant shall be offered the opportunity to cross-examine the testimony from the April 28, 2022 hearing and to offer objections to the entry of the documents accepted for the record at that hearing and at the January 24, 2023 hearing. The claimant is to produce Michelle DuBois and his 2015 and 2016 W-2 tax forms from this employer.

The hearing section shall contact the claimant regarding accommodations to provide him with the documentation for the hearing, including the transcripts, the hearing packets, and any additional documents and exhibits received from the parties that had not been included in the hearing packets.

The Judge may take further relevant and material evidence as the Judge deems necessary.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of lack of total unemployment, recoverable overpayment, and willful misrepresentations, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the

hearing, all parties will have had a full and fair opportunity to be heard;
and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the
issues of lack of total unemployment, recoverable overpayment, and willful
misrepresentations, which shall be based on the entire

record in this case, including the testimony and other evidence from the
original and the remand hearings, and which shall contain appropriate findings
of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER